

MINUTES OF FEBRUARY 4, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 4, 2013, at 7:00 p.m. in the County Council Chambers, County Administrative Building, Georgetown, Delaware.

The meeting was called to order at 7:05 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members, Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, and seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 11149 – Eric J. Polansky – north of Route 54 (Lighthouse Road) southeast of Laws Point Road, being Lot 66, Block E within Swann Keys development. (Tax Map I.D. 5-33-12.12-2.00)

An application for variances from the side yard setback requirement.

Mrs. Isaacs presented the case. Eric Polansky and Charming Polansky were sworn in to testify about the Application. Jane Patchell, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a variance of 3.2 feet from the 10 feet side yard setback requirement for an open deck and steps and a variance of 4.2 feet from the 10 feet side yard setback requirement for an existing manufactured home. Ms. Patchell stated that the Applicant purchased the Property in May 2007; that the manufactured home was placed in 1993 by a prior owner; that a Certificate of Compliance was issued for the dwelling in 1995; that a variance was granted in 2007 to bring the unit into compliance with the Sussex County Zoning Code; that the Applicant has added onto the unit and was not aware the Applicant needed variances for the additions; that the Applicant obtained a building permit for the new additions; that the additions are in line with the existing manufactured home; that the dwelling was inspected in 2009 and in 2011 with no mention as to the issues with placement; that the Applicant is selling the Property; that a survey completed for settlement showed the encroachment; that the lot is 40 feet wide making it unique in size; that the existing hallway in the unit prevents the addition from being built in strict conformity with the Sussex County Zoning Code; that the variances are necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the variances do not alter the essential character of the neighborhood as it has been in place for 18 months; and that the variances are the minimum variances necessary to afford relief.

Mr. Polansky, under oath, confirmed the statements by Ms. Patchell. Mr. Polansky testified that the addition was constructed as depicted on the plans submitted with the building permit application and that no one mentioned a problem with the setbacks at that time.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11149 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The variances will not alter the essential character of the neighborhood;
4. The variances will not be detrimental to the public welfare; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11150 – Estate of Marie Anderson, Marlene Bottomly, Administratrix – north of Route 54 (Lighthouse Road) west of Blue Bill Drive, being Lot 43, Block G within Swann Keys development. (Tax Map I.D. 5-33-12.16-183.02)

An application for variances from the front yard and side yard setback requirements.

Mrs. Isaacs presented the case. Glenn Piper, Real Estate Appraiser, was sworn in to testify about the Application. Jane Patchell, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a variance of 3.9 feet from the 10 feet front yard setback requirement for an existing manufactured home, and a variance of 3.2 feet from the 10 feet side yard setback requirement for an existing manufactured home.

Ms. Patchell stated that Marie Anderson inherited the Property from her mother; that Marie Anderson passed away in 2011 leaving no known heirs; that Marlene Bottomly, Administratrix is recovering from surgery and could not attend the hearing; that Mr. Piper is the listing agent for the sale of the Property; that he appraised the Property in 2006 and the only change since then was the deck; that Marie Anderson had the deck built; that the Property is only 50 feet wide and that the unit is now classified as a Class “C” home; that the dwelling is permanently affixed to the Property and would have to be removed from the foundation to be moved; that the dwelling has existed in its present location since 1984; that the variances are necessary to enable reasonable use of the Property; that the variances will not alter the essential character of the neighborhood due to the fact that the dwelling has been in its current location for many years; that there are no known heirs and the proceeds of the sale will go to the State; that

the variances will not be detrimental to public welfare; that the variances are the minimum variances necessary to afford relief; and that the difficulty was not created by the Applicant. Ms. Patchell submitted exhibits to the Board to support the Application.

Mr. Piper testified that he is a licensed realtor and real estate appraiser; that he appraised the Property in 2006 after the death of Ms. Anderson's mother; that he appraised the Property again after Ms. Anderson's death; and that the footprint of the dwelling has not changed since 2006 except for the placement of the deck.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11150 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11151 – Marco A. Morales & Norman W. Bennett – northwest of Route 24 (John J. Williams Highway) east of Bryn Mawr Drive, being Lot 130, Section 1, within Maplewood development. (Tax Map I.D. 3-34-12.00-323.00)

An application for a variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Charles Seaman, Real Estate Agent, was sworn in to testify about the Application. Jane Patchell, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a variance of 3.4 feet from the 30 feet front yard setback requirement for an existing dwelling and porch. Ms. Patchell stated that the dwelling was constructed in 1992; that a Certificate of Compliance was issued in 1992; that the Applicants purchased the Property in December 2000; that the Applicants are selling the Property; that a survey completed for settlement showed the encroachment; that the Property is unique since the dwelling has been on the lot for 20 years; that the dwelling and the porch have been in their current location since 1992; that the variance will enable reasonable use of the Property; that the difficulty was not created by the Applicants; that the variance will not alter the essential character of the neighborhood as the neighboring properties have been developed; that the variance does not impair the uses of adjacent properties, since they are developed; that the

variance is the minimum to afford relief; that Mr. Seaman stated that there have been no changes to the structure since 2000 when he first listed the Property; and that to clear the record an error on the survey shows Lot 106 to the North of the Property and it should be Lot 106A.

Mr. Seaman, under oath, confirmed the statements by Ms. Patchell. Mr. Seaman testified that he is a real estate salesperson; that he was involved with the sale of the Property recently; that he was also involved in the sale of the Property in 2000; and that he saw no change in the structure from 2000 to 2013.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11151 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11152 – Tara McDonald – south of Route 54 (Lighthouse Road) northeast of Pine Road, being Lot 35 within Keen-wik development. (Tax Map I.D. 5-33-19.12-47.00)

An application for a variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Tara McDonald was sworn in and testified requesting a variance of 5 feet from the 10 feet side yard setback requirement for an existing in-ground pool. Ms. McDonald testified that she purchased the Property in May 2012; that she had the pool installed that summer; that the proposed location of the pool was based on the survey completed for her settlement; that the pool company installed the pool while she was out of town; that the pool company moved the pool over five (5) feet from the staked out location to keep the pool from being too close to a set of existing steps; that 1,000 square feet of concrete had also been poured around the pool and would be a large expense to move the pool; that the variance is necessary to enable reasonable use of the Property; that the existing stairs create a unique situation; that a building permit was obtained for the pool; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Ordinance; that the difficulty was not created by the Applicant because the installer made a mistake; that the variance will not alter the essential character of the neighborhood; that the variance requested is the least modification

of the regulation at issue; that the variance is the minimum variance to afford relief; that the variance sought is not detrimental to the public welfare; and that the Homeowner's Association and neighbors support the Application.

The Board found that no parties appeared in support of or in opposition to the Application.

Mrs. Isaacs stated that the Office of Planning & Zoning received a letter in support of the Application from the Keenwik Building Commission.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11152 for the requested variance based on the record made at the public hearings and for the following reasons:

1. The Property is unique in shape;
2. The difficulty was not created by the Applicant;
3. The variance is necessary to enable reasonable use of the Property;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11153 – Christian Brauer – west of Road 312 (River Road) approximately 900 feet west of Road 312A (Layton Davis Road). (Tax Map I.D. 2-34-34.10-49.00)

An application for a variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Christian Brauer was sworn in and testified requesting a variance of 1.4 feet from the 10 feet side yard setback requirement for a non-conforming dwelling. Mr. Brauer testified that he is the builder and is representing the property owners; that the owners wish to construct an addition to their dwelling; that the dwelling is a non-conforming structure as it encroaches into the building restriction lines; that the lot is narrow in size; that the dwelling is built at an angle on the lot; that there is an existing full basement to the dwelling; that they plan to demolish the dwelling, leaving only the foundation and subfloor; that they have recently upgraded the bulkhead on the Property; that the proposed addition will “square up” the structure; that there would be a great cost to bring the entire structure into compliance with the zoning code; that the addition would conform with the zoning code; that the variance will enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the variance will not alter the essential character of the neighborhood; that the variance is the minimum variance necessary to afford relief; that the variance is necessary to achieve a satisfactory appearance and for ease of construction; that the existing dwelling has no indoor

shower; and that the existing outside shower will be removed bringing the North side of the dwelling into compliance. Mr. Brauer submitted exhibits to the Board for review.

Glen Ewing was sworn in and testified in opposition to the Application. Mr. Ewing testified that he is more concerned than opposed to the Application; that the owners have never met with him to explain their plans; and that he is concerned they plan to raise the existing structure or build a larger dwelling on the Property.

The Board found that no parties appeared in support of the Application.

The Board found that one (1) party appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11153 for the requested variance based on the record made at the public hearings and for the following reasons:

1. The Property is unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The variance will not be detrimental to the public welfare.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11154 – Bob Culotta-Norton & Margo Culotta-Norton – north of Road 342A (Sussex Road) north of Dover Road, being Lot 9, Section A within Indian River Acres development. (Tax Map I.D. 1-34-7.00-9.00)

An application for variances from the side yard and rear yard setback requirements.

Mrs. Isaacs presented the case. Greg Hastings was sworn in and testified requesting a variance of 1.6 feet from the 10 foot side yard setback requirement for an existing second floor deck, a variance of 1 foot from the 10 foot side yard setback requirement for an existing dwelling and screen porch, and a variance of 15 feet from the 20 foot rear yard setback requirement for an existing second floor deck. Mr. Hastings testified that the Applicant plans to renovate the existing structure which is a non-conforming dwelling; that since the renovations will exceed 50% of the value of the dwelling FEMA requires that the existing structure be raised two feet to comply with FEMA regulations and to meet the flood zone requirements; that the non-conforming dwelling and FEMA regulations create a unique situation; that the footprint of the existing structure will remain the same; that the variances will enable reasonable use of the Property; that the difficulty was not created by the Applicants; that the variances will not alter

the essential character of the neighborhood; that the variances are the minimum variance to afford relief; that the variances will not be detrimental to public welfare; that the variances represent the least modification of the regulations at issue; that the dwelling was constructed over fifty (50) years ago; and that the Applicants inherited the Property.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11154 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The FEMA regulations and non-conforming dwelling creates uniqueness;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances will not be detrimental to the public welfare.

Motion by Mr. Mill, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11155 – 26 Centre, LLC – northeast corner of Route 113 (DuPont Boulevard) and Cricket Street. (Tax Map I.D. 2-33-5.00-166.01)

An application for a special use exception to place a billboard and variances from the minimum side yard setback, the minimum square footage, maximum height requirement, and a variance from the setback requirement from a dwelling.

Mrs. Isaacs presented the case. Andrew Timmons was sworn in and testified requesting a special use exception for a billboard, a variance of 600 square feet from the 600 square-foot maximum square-foot requirement, a variance of 15 feet from the 25 feet height requirement, a variance of 10.6 feet from the 300 feet setback requirement from a dwelling, a variance of 39.2 feet from the 300 feet setback requirement from a dwelling, a variance of 223.2 feet from the 300 feet setback requirement from a dwelling, a variance of 100.3 feet from the 300 feet setback requirement from a dwelling, and a variance of 93.7 feet from the 300 feet setback requirement from a dwelling for a proposed billboard. Mr. Timmons testified that the Property is zoned commercial (C-1); that the surrounding properties are zoned C-1; that the Property is an ideal location for advertising; that the Property is located near a shopping center; that the non-conforming lot is 19,500 square-feet in size; that the Property is smaller than a traditional commercial lot; that there is no public water or sewer service available to the Property; that all adjacent properties are commercial properties; that the highest and best use for the Property is commercial; that DelDOT will not approve and entrance for the lot from Route 113; that these

factors have made the Property impossible to sell; that DelDOT has taken a portion of the Property creating an even more narrow lot; that the septic area is located within the building envelope where parking and building would be located; that there are four (4) dwellings affected by the proposed billboard; that three (3) of the dwellings near the Property are owned by the Applicant; that they have a letter of no objection from the owner of the other nearby dwelling; that the proposed billboard will be forty (40) feet tall; that the proposed billboard will be a double-sided, steel monopole structure; that there are 25 billboards between Dagsboro and Georgetown; that 16 billboards are owned by Clear Channel; that 14 of those billboards are double-sided steel monopole structures; that the variances are needed to enable reasonable use of the Property; that the proposed billboard will not interfere with traffic visibility; that the proposed billboard is not within 300 feet of another billboard; that the difficulty was not created by the Applicant; that the variances are the minimum to afford relief; that the lot cannot be otherwise developed; that the height variance is needed to prevent obstruction of a neighboring properties sign; that the variances will not alter the essential character of the neighborhood; that the proposed billboard will meet the required setback requirements; that he has a waiting list of potential advertisers for the proposed billboard; that a larger billboard is necessary in order to be competitive with other billboards in the area; that there are other double-sided billboards in the area so the character of the neighborhood will not be altered; and that the billboard will not adversely affect neighboring properties. Mr. Timmons submitted a packet of information to the Board for review.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **tabled until February 18, 2013**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

OLD BUSINESS

Case No. 11106 – Alice P. Robinson – north of Route 1 (Coastal Highway) northwest corner of Terrace Road and Silver Lane, being ½ of Lot 2, 3, 4, 5 & ½ of Lot 6 within Silver Lake Manor development. (Tax Map I.D. 334-20.05-325.00 & 326.00)

An application for variances from the required lot size requirement for a parcel, the minimum lot width for a parcel and the corner side yard setback requirement.

The Board discussed the case which has been tabled since January 28, 2013.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11106 for the requested variances based on the record made at the public hearings and for the following reasons:

1. Variance Request from the Minimum Lot Width Requirement

- a. The Property is unique because there are two (2) twenty-five feet residual portions of lots on opposite sides of the Property;
- b. An exceptional practical difficulty exists because the original subdivision was for fifty (50) feet wide lots and due to the residual lots being located on opposite sides of the Property.
- c. The Property cannot be developed in strict conformity with the Sussex County Zoning Ordinance because the residual lots are located on opposite sides of the Property and are too small to be developed.
- d. The variances are necessary to enable reasonable use.
- e. The difficulty was not created by the Applicant. In 1972, the Applicant acquired 25 feet of Lot 6. In 1974, 25 feet of Lot 2 was deeded to Silver Lake Shores for access to the development. In 1978, the Applicant acquired the remaining 25 feet of Lot 2 and all of Lot 3.
- f. The variances will not alter the essential character of the neighborhood.
- g. The variances will not substantially or permanently impair the appropriate use for development of adjacent property. The adjacent properties are residential and some lots are 50 feet wide.
- h. The variances will not be detrimental to the public welfare.
- i. The variances represent the least modification of the regulation at issue.
- j. The variances are the minimum variances necessary to afford relief.

2. Variance Request from the Minimum Lot Size Requirement

- a. The Property is unique because there is not enough depth to the existing lots that would allow for the minimum 10,000 square feet lot size. The original lot sizes of the subdivision were less than 10,000 square feet.
- b. An exceptional practical difficulty exists because there is not enough depth to obtain the minimum 10,000 square feet lot area.
- c. The Property cannot be developed in strict conformity with the Sussex County Zoning Ordinance because the lots as currently recorded are less than 10,000 square feet in size.
- d. The variances are necessary to enable reasonable use. The use of the Property will be consistent with what the original 1929 subdivision plat intended to have with the lot sizes.
- e. The Applicant did not create the difficulty. The lots, as plotted in the subdivision, are less than 10,000 square feet.
- f. The variances will not alter the essential character of the neighborhood. The character of the neighborhood is that lots are less than 10,000 square feet.
- g. The variances will not substantially or permanently impair the appropriate use for development of adjacent property. The majority of adjacent properties are less than 10,000 square feet.
- h. The variances will not be detrimental to the public welfare.

3. Variance Request from the Corner Yard Setback Requirement

- a. The Property is unique because the fifty (50) feet lot width without the variance will only allow for a 25 feet building envelope for a dwelling.

- b. An exceptional practical difficulty exists because a variance is needed in order to have the building envelope necessary to build a dwelling in the character of other dwellings in the neighborhood.
- c. The Property cannot be developed in strict conformity with the Sussex County Zoning Ordinance. The corner lot requirement is set up as a “one size fits all” regulation but does not follow the pattern of the development.
- d. The variance is necessary to enable reasonable use. The corner lot variance will allow Lot 2 to have the same building width as the other fifty (50) feet wide lots in the neighborhood.
- e. The Applicant did not create the difficulty. The corner lot requirement in the Code does not allow for the multiple scales of lot sizes that are recognized in the Code.
- f. The variance will not alter the essential character of the neighborhood. The variance will allow the dwelling to have width that is in line with other homes in the neighborhood.
- g. The variance will not substantially or permanently impair the appropriate use for development of adjacent property. The adjacent properties are also developed and, in some cases, sit closer to the road.
- h. The variance will not be detrimental to the public welfare.
- i. The variance represents the least modification of the regulation at issue.
- j. The variances are the minimum variances necessary to afford relief. This variance will afford the Applicant the ability to give to each of her children the same size lot and building area.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Mills – yea, Mr. Callaway – yea.

Meeting Adjourned 8:55 p.m.